

DOCUMENT RESUME

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[Protest of the Award of a Firm Fixed-Price Contract to Provide an Occupational Health Program]. B-188372. September 22, 1977. 7 pp. + enclosure (1 pp.).

Decision re: Charter Medical Corp.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Energy Research and Development Administration; National Health Services, Inc.

Authority: 54 Comp. Gen. 1009. 55 Comp. Gen. 244. B-183816 (1975). E-187892 (1977).

Award of a firm fixed-price contract was protested on the central issue of whether the contracting agency acted properly in awarding a contract on the basis of price instead of technical superiority as emphasized in the solicitation. The protest was sustained because the selection of the inferior proposal on the basis of price was improper, but the contract was not disturbed since it will end soon. (Author/SS)

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Paul Sherry
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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-188372

DATE: September 22, 1977

MATTER OF: Charter Medical Services, Inc.

DIGEST:

1. Where solicitation criteria indicates technical aspects of proposal for occupational health program is Government's primary consideration, selection of inferior technical proposal on basis of price was improper.
2. Even though cost is referenced as minor evaluation factor in solicitation, it may become determinative consideration where competing proposals are regarded as essentially equal technically, nevertheless procuring activity characterization of proposals as "qualified" did not justify award on basis of price since proposals were not essentially technically equal.

Charter Medical Services, Inc. (CMS) protests the Energy Research and Development Administration's (ERDA) award of a firm fixed-price contract to National Health Services, Inc. (NHS) to provide an occupational health program for ERDA employees in the District of Columbia.

Although a number of issues have been raised by the protester the central issue is whether ERDA acted properly in awarding a contract on the basis of price instead of technical superiority as emphasized in the solicitation. We find that the award was improperly made.

The procurement was initiated by request for proposals (RFP) No. EA-77-R-10-0011 issued December 16, 1976, which required that initial proposals be submitted by January 10, 1977. The RFP stated that proposals would be evaluated on the following bases:

"Contractor selection will be based upon the evaluation of proposals received. The following technical criteria will be point scored and considered by ERDA in making a selection. These factors are listed in descending order, with Personnel Qualifications representing about one-half of the total score. Understanding of and

Approach to the Required Work will be about three times as important as Corporate Resources.

"1. Personnel Qualifications

- a. Training and experience of Key Personnel (Medical Director, Chief Nurse) beyond that specified as minimum.
- b. Training and experience of the Staff Nurse beyond that specified as minimum.

The resultant contractor will be required to provide personnel as listed below for performance of the required services. * * *

a. Physician

* * * * *

b. Chief and Staff Nurses

* * * * *

- d. The contractor shall furnish resumes of key personnel, including information on education, training, and experience. * * *
- e. Training and experience of the Staff Nurse. Provide resume, including information on education, training and past experience.

"2. Understanding of an Approach to the Required Work

- a. Plan for day-to-day operation of the facility including the following major services:
 - (1) Diagnosis and Treatment
 - (2) Employee Health Maintenance and other examinations
 - (3) Preventive programs
 - (4) Health Counseling and Education
 - (5) Administrative
- b. Plan for day-to-day operation of the facility--
Submit a plan for operation of the various aspects of the ERDA occupational health

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program, from the standpoint of providing occupational medical and administrative services. * * *

c. Contractor's on-site organization-- * * *

"3. Corporate Resources

a. Ability of the Contractor to provide technical and medical support to the on-site staff * * *

As part of the evaluation process, appropriate consideration of business factors, such as price, financial condition and compliance with Federal contracting requirements will be evaluated but not point scored."

The ERDA Source Selection Panel (SSP) met on January 26, 1977 to determine overall point ratings for each of the six proposals received. It was decided that the SSP would make a technical evaluation of each of the proposals and then a separate cost analysis would be made of each offeror's cost proposal. All three SSP members rated the proposals independently with the following total point scores representing an average of these ratings:

| | |
|------------------------------------|-----|
| Charter Medical Services (CMS) | 924 |
| National Medical Advisory Services | 827 |
| Comprehensive Health Services | 604 |
| National Health Services (NHS) | 604 |
| Preventive Health Programs | 545 |
| Applied Management Services | 479 |

The SSP determined that consideration should be given only to the top rated proposals provided that the prices were in line with ERDA's projected budget for the Health Unit. After consulting with the price analyst SSP determined that the CMS proposal price of \$55,318, though slightly higher than the price of \$52,583 submitted by the next highest rated proposal of National Medical Advisory Services, represented the better proposal since more was spent on direct services to ERDA employees. On the basis of this information SSP made a unanimous recommendation that award be made to CMS. However, on January 27, 1977 an ERDA

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procurement official determined that discussions should be held to verify the ratings assigned. Thereafter, the fifth and sixth rated proposals were determined to be outside the competitive range and were dropped from further consideration.

Oral discussions with each of the four offerors were held on January 31, 1977. Best and final offers were received from each of the offerors prior to the February 1, 1977 deadline. The SSP evaluation of these four proposals verified its earlier findings. The final ratings and price proposals were as follows:

| | <u>Medical Officer</u> | <u>Chief Nurse</u> | <u>Staff Nurse</u> | <u>Under- standing and Approach to the Work</u> | <u>Corporate Resources</u> | <u>Totals</u> | <u>Price Pro- posals</u> |
|---------------------------------------------|----------------------------|------------------------|------------------------|-----------------------------------------------------------------|--------------------------------|---------------|----------------------------------|
| Charter Medical Services (CMS) | 188 | 213 | 40 | 363 | 112 | 916 | \$54,950 |
| National Medical Advisory Services | 200 | 150 | 40 | 345 | 112 | 847 | \$52,583 |
| Compre- hensive Health Services | 125 | 161 | 45 | 250 | 68 | 659 | \$43,472 |
| National Health Services (NHS) | 138 | 116 | 40 | 256 | 90 | 640 | \$40,440 |

The SSP's evaluation memorandum indicates that on February 1, 1977, it was the SSP's unanimous opinion that CMS was best qualified to administer the occupational health program. In this connection the SSP memorandum includes the following ratings:

- "1. Charter Medical Services: This firm was the leading contender in the initial review and emerged as the unanimous winner following the final evaluations. Major strengths that contributed to this conclusion included the following:

- a. The principal organizer and administrator of a small health unit is the Chief Nurse and this firm's Chief Nurse was rated at 213 points, 52 points higher than the next highest rated nurse. Charter's nurse has almost eight years of experience in employee health units, over two years of which was as head nurse.
- b. The Medical Director proposed is presently employed in two other employee health units and is backed up by Dr. Siegel who has many years of experience directing the Government's employee health units nationally.
- c. Charter Medical Services is a wholly owned subsidiary of Charter Medical Corporation whose sole business is delivering health care services. The corporation has 36 medical care facilities in 10 states and has a net worth of \$17,000,000.00. It is financially and technically best equipped to support the local health unit.

* * * * *

- "4. National Health Services, Inc.: This firm ranked fourth in the final review. The principal weakness of the firm was the low rating of the Chief Nurse who is very inexperienced in employee health unit work and whose attitude was adjudged to be poor by [the medical advisor] during the oral discussions.

This firm also rated low because the project officer has no medical background or training."

However, there is an attachment to the SSP Memorandum which was executed by one of the SSP members on February 2. It states, in part:

"Concerning the panel's findings, it would be more accurate to say that Charter Medical Services was considered to be the best technically qualified but certainly was not the only qualified concern because any of the four highest technically rated firms were deemed to be capable of performing the required services. It would have been necessary for the panel to justify why the Government should pay several thousand dollars (\$14,516) - the difference

between Charter's price of \$54,956 and National Health Service's price of \$40,440 - or the difference between any of the other firms - National Medical Advisory Services or Comprehensive Health Services - when the panel and more specifically its medical advisor, * * * had reached the conclusion that any of the four firms with whom orals were held was qualified technically to perform the required services."

Following submission of the SSP findings to the selection official award was made to NHS on February 4, 1977.

ERDA has advised our Office that the selecting official's award to NHS followed a determination that the Government's best interest would be served by selecting the lowest fixed-price offer submitted. Specifically, ERDA has indicated that since all of the offerors in the competitive range were adjudged technically qualified its decision to award to NHS, the lowest priced offeror, was consistent with the evaluation scheme contained in the RFP.

At the outset we note that procuring agencies are required to advise offerors of the criteria against which proposals will be evaluated and to adhere to those criteria when evaluating proposals. Computer Data Systems, Inc., B-187892, June 2, 1977, 77-1 CPD 384 and cases cited therein.

The solicitation advised offerors of the relative importance of the technical criteria. However, offerors were not advised of the relative importance of price in relation to the technical criteria but rather were informed only that price, as one of several factors, would be given "appropriate consideration" and would be evaluated but not point scored. In these circumstances we believe offerors were left in the position of having to interpret the RFP to determine the relative importance of price verses the various technical factors. Since price was included, almost as an afterthought below a detailed list of technical criteria an offeror might reasonably conclude that price was to be a secondary consideration. See Dynalectron Corporation, 54 Comp. Gen. 1009, 75-1 CPD 341.

Of greater concern, however, is the ERDA determination that price should be the determining factor in making award under the instant solicitation. We recognize that it is primarily the function of source selection officials to weigh the various factors placed before them in making an appropriate source selection decision under the circumstances of a particular case, and that these officials are vested with a considerable range of judgment and discretion in carrying out this

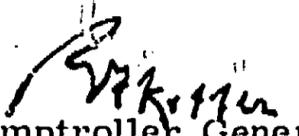
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task. See Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168; and decisions cited therein. It is also true that where several competing proposals are "essentially equal" technically, price properly becomes the determining factor even in procurements where price is designated as a relatively unimportant evaluation criterion. See Bunker Ramo Corporation, 56 Comp. Gen. ___, 77-1 CPD 427, and cases cited therein.

However, in the instant case the record does not support the conclusion that the four proposals included within the competitive range were "essentially equal" so as to permit price to become the determining factor notwithstanding the statement contained in the attachment to the SSP evaluation memorandum that each offer was "qualified" to perform the services. The fact remains that the proposal of NHS, the lowest rated technical proposal, received 276 fewer points in the technical evaluation than the CMS proposal. It also received a very low rating in the critical category of Chief Nurse. Although there is some discussion in the record concerning the \$14, 516 cost differential between the CMS and NHS proposals there is no attempt to either categorize the proposals as technically equivalent or to categorize CMS's price as unreasonably high. In view of the fact that the evaluation criteria set forth in the RFP indicates that price is to be a minor consideration and considering the extremely large gap in the technical scores between CMS and NHS it is our view that ERDA has failed to follow its announced evaluation scheme by awarding the contract to National solely on the basis of price. See EPSCO Incorporated, B-183816, November 21, 1975, 75-2 CPD 338.

For the foregoing reasons the protest is sustained. However since NHS has a current and on-going requirement for the occupational health unit and since the current contract is to run only until February 6, 1978 we do not believe we would be warranted in disturbing the contract.

Although we do not believe it is in the Government's best interest to recommend contract termination in this case we are concerned over the procurement deficiencies noted and by separate letter are bringing this matter to the attention of the Administrator, Energy Research and Development Administration.


Deputy Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

Paul Sherry
P. Sherry

IN REPLY REFER TO: B-188372

September 22, 1977

The Honorable Robert W. Fri
Acting Administrator
Energy Research and Development
Administration

Dear Mr. Fri:

Enclosed is a copy of our decision of today regarding the protest of Charter Medical Services, Inc. under request for proposals No. EA-77-R-10-0011 concerning an occupational health program for ERDA employees with duty station in the District of Columbia. The protest has been sustained on the ground that award to the successful offeror, National Health Services, Inc., on the basis of price was improper in light of the evaluation criteria contained in the solicitation.

We hope that steps will be taken to insure that in future procurements the deficiencies noted in our decision will not be repeated.

Sincerely yours,

R. J. Kistner
Deputy Comptroller General
of the United States

Enclosure